IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/08/2004

CORAM
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.34003 of 2003

P.M.Anbu Mani .. Petitioner

-Vs-

1.The Chairman and Managing Director
The State Trading Corporation of
India Ltd.,
Jawahar Vyapar Bhavan
Tolstoy Marg, New Delhi 110 001.
2.The Branch Manager
The S.T.C. of India Ltd.,
Chennai Branch
Chennai House
Chennai 600 108. .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the impugned order of the 1st respondent dated 20.10.2003 passed on the appeal filed by the petitioner dated 21.3.2002 and quashing the same and directing the respondents to reimburse the amount of Rs.1,85,130/- to the petitioner as per the bills and cash receipts already furnished to the respondents, in respect of the treatment undergone by the petitioner in Apollo Hospital, Chennai, for Coronary Arteries By-Pass grafting during the period from 21.9.2001 to 7.10.2001 and also to continue to reimburse in respect of any tr eatment by the petitioner in the future.

!For Petitioner : Mr.P.Jyothimani
^For Respondents : Mr.K.V.Prakash for RR1 and 2

:ORDER
Invoking the writ jurisdiction of this Court, the petitioner has sought for a writ of certiorarified mandamus for the purpose of quashing the order by the first respondent dated 20.10.2003 and for a direction to the respondents to reimburse the amount of Rs.1,85,130/- representing the amounts which were spent for his treatment in Apollo Hospital, Madras.
2. The affidavit filed in support of the petition and the counter affidavit are perused.
3. The learned Counsel for the petitioner would submit that the petitioner joined the State Trading Corporation (STC), the respondent herein, on 11.10.1978 as the Finance Manager, after serving 16 years in Indian

Railways and other public sector undertakings for 6 years, and thus, the petitioner had a total service of 35 years; that the respondent Corporation implemented the STC (Retired Employees) Medical Benefit Scheme with effect from 1.10.1981, which is a welfare scheme for the benefit of the retired employees and his/her spouse; that the scheme was purely voluntary; that the petitioner opted and applied for voluntary retirement, and accordingly, he was relieved on voluntary retirement on 31.8.1991; that he applied for members of the scheme on 23.10.1991; that after collecting the prescribed annual contribution, he was enrolled as a member of the Scheme with an identity card issued to him; and that he was availing the benefits of the welfare scheme for a period of 12 years till 2003.

4. Added further the learned Counsel that the petitioner due to severe heart attack, was admitted in the Apollo Hospital, Madras, and he had undergone Coronary Arteries By-Pass Grafting; that he was taking treatment for tests, surgery and post-operative treatment for a period of 16 days from 21.9.2001 to 7.10.2001; that on that count, he had spent a sum of Rs.1,85,130/-; that he presented a reimbursement claim bill with all the original cash receipts and all other medical reports as per the procedure to the second respondent on 23.10.2001; that the Personnel Manager of the second respondent by a letter dated 7.11 .2001 informed the petitioner that he was eligible for reimbursement of charges only for the first two days that was for 21.9.2001 and 22.9.2001 as per STC Corporate Office Circular No.IR/26/2000 dated 24.8.2000; that he made an appeal petition to the fi rst respondent, who rejected the same outright stating that he was not eligible since to have the benefit of the medical reimbursement, he should have put in not less than 15 years of service in the STC; but, he had only at the time of retirement a service of 12 years and 6 months, and thus, he was not eligible; that on rejection of the appeal petition before the first respondent, there arose a necessity for filing this writ petition before this Court.

5. The learned Counsel would further submit that the petitioner became a member of the said scheme which came into force in the year 1981 ; that he was voluntarily retired in the year 1991; that he was a member of that scheme all along; that he was making payment of subscription then and there; that he is also availing the medical reimbursement at the rate of Rs.2,500/- per half year and continued to avail the benefit till 2003; and that it was only an afterthought that he was eligible only for two days, as per the original circular subsequently amended in the year 1993. It is further submitted that the denial of the benefit on the ground that he had not put in 15 years of service has got to be rejected for the simple reason that in the year 1993, there was a circular wherein it has been clearly brought out that 15 years of service originally found in the Circular of 1989, would include the service of the concerned staff in other public undertakings also; that in the instant case, the petitioner was working in the other public sector undertakings for a period of six years, and thus, he had put in more than 15 years of service; that in such circumstances, he is eligible for the benefit, and hence, the order of the first respondent has got to be quashed, and a direction should be given for the reimbursement of the amount claimed by him.

6. Answering to the above contentions, the learned Counsel for the respondents would submit that it is true that the petitioner was working as a Finance Manager of the STC, and he retired on Voluntary Retirement Scheme (VRS) on 31.8.1991; that at the time of VRS, he has given an undertaking that

he will abide by the rules as to the voluntary retirement; that in 1989, the first circular was brought out, wherein, no medical benefits were found; that subsequently, it was modified by a second circular, wherein it has been stated that the medical benefit was available for the persons, who had attained 55 years of age and who had served for 15 years; that by way of a third circular, it was amended that the total service should be 15 years; that in the instant case, the petitioner had put in service in STC only for a period of 12 years and 6 months; that he did not put in 15 years of service, and thus, he was not eligible for the benefit of the same.

7. Added further the learned Counsel for the respondents that the petitioner, when he retired on 31.8.1991, the circular that was available in respect of the medical benefits to the retired employees was of the year 1989, and he was bound by that circular; that the petitioner now wants to rely on the circular of the year 1993, which is not at all applicable for him, for the simple reason that it was not given retrospective effect, but only prospective effect; and that the said circular of the year 1993 is applicable to the members, who came under VRS only at that time or subsequent thereto.

8. The learned Counsel for the respondents would further submit that it is true that he was a member of the Scheme; that he has also paid the subscription; that he has been paid Rs.2,500/- half yearly towards medical reimbursement as contemplated under the scheme; but, it was actually a mistake that has crept in; that because of a mistake, he cannot claim any reimbursement under the scheme; that the benefit is given to him only for a short period, and the same would not enable him to have the further benefit in law, to which he is not entitled to, and under these circumstances, the writ petition has got to be dismissed by this Court.

9. After careful consideration of the rival submissions and scrutiny of the materials available, this Court is of the considered opinion that the petitioner before this Court is entitled to the relief asked for.

10. It is not in controversy that the petitioner was working as Finance Manager of the STC from the date of his appointment on 11.10.1978 , and he had put in 12 years and 6 months of service in that institution. The case of the petitioner is that he was working in Railways for 16 years and for 6 years in the other public sector undertakings, and thus, totally he had 22 years of service, which fact is not disputed by the respondents. Thus, it would be abundantly clear that the petitioner was working in public sector undertakings for a period of 6 years prior to his appointment by the second respondent on 11.10.19 78. It is also not in controversy that the petitioner retired under VRS on 31.8.1991. It is an admitted position that he underwent Coronary Arteries By-Pass Grafting, and he was hospitalised, and he took treatment for a period of 16 days from 21.9.2001 to 7.10.2001. It is pertinent to note that he has also presented before the respondents a reimbursement claim bill with all the original cash receipts and complete medical reports, which would go to show that he had the treatment as detailed by him; that he was hospitalised between 21.9.2001 and 7.10.2001; and that he had spent a sum of Rs.1,85,130/-, which fact is not disputed by the second respondent either before the first respondent at the time of the appeal or before this Court.

11. Now, the contention of the petitioner is that he has got to be reimbursed of the total sum for the reason that he was a member of the STC (Retired Employees) Medical Benefit Scheme from 23.10.1991; that he continued

to be so till 2003; that he has paid the subscription, and he has been paid the benefit at the rate of Rs.2,500/- per half year, and he has been enjoying so. The fact that he was enrolled as a member of the STC (Retired Employees) Medical Benefit Scheme; that he was making the subscription every year; and that he was enjoying the benefit of the scheme till 2003 i.e. nearly for a period of 12 years, after his retirement, is vouched by the records available and is also not disputed by the second respondent. Now, at this stage, the only contention put forth by the petitioner is that he wants to have the benefit, since he was a member of the said scheme. The claim is vehemently resisted by the respondents' side s tating that he is not entitled to the benefit for the simple reason that in the year 1991, when he retired, he was bound by the original circular in respect of the benefits which came to be issued in 1989, and he has also given an undertaking that he was bound by the circular regarding the benefits. In answer to this, the learned Counsel for the petitioner brought to the notice of the Court a circular issued in the year 1993. The denial of the benefit by the first respondent was on the ground that he has not put in 15 years of service in the STC; but, he has put in service for 12 years and 6 months only, and so long as he has not completed 15 years of service in that particular institution, he is not entitled to the benefit, and hence, his claim was to be rejected. The learned Counsel for the respondents would add that he retired in the year 1991, and he gave an undertaking that he was bound by the rules available therein, and actually the circular of the year 1989 was invoked, and as per the circular, he was not entitled to any benefit at all, and now, he cannot rely on the circular of the year 1993 and say that the 15 years of service mentioned therein would include the service put in by him in the public sector undertakings.

12. Attractive though the contentions put forth by the learned Counsel for the respondents, they do not stand the scrutiny of either the factual position or the legal position. In the instant case, the petitioner joined the scheme in the year 1981 itself as a member, and he has been enrolled so and treated so. It remains to be stated that he has paid the subscription under the scheme, and he has been enjoying the benefits of the scheme by way of getting Rs.2,500/- per half year towards medical reimbursement for a period of 12 years till 2003. If the contention put forth by the respondents' side that the benefit of the circular of the year 1993 was not available and it was only prospective in character is to be accepted, then the benefit should not have been given to him for a continuous period of 12 years till 20 03. Under the circumstances, it would be quite indicative of the fact that the circular which was issued by the second respondent in the year 1993 stating that in order to get the benefits under the STC (Retired Employees) Medical Benefit Scheme, the 15 years of service would include the prior service in the public sector undertakings also, was nothing but intended both for the employees who retired in the past and in future also. In the instant case, the contention of the petitioner's side that he had put in service for 6 years in other public sector undertakings, prior to his appointment in the STC is not disputed by the second respondent or by the first respondent anywhere. Therefore, it has got to be taken that the benefit of the scheme is very well available to the petitioner.

13. Added further, it was a case where the petitioner originally made his claim application as per the procedures under scheme, and he received a reply from the second respondent stating that he could have the encashment of

the bills only for two days namely 21.9.2001 and 22 .9.2001 and not for the later 14 days. The learned Counsel for the petitioner brought to the notice of the Court that even subsequently also, the Office of the first respondent at Madras has also been advised to reimburse the expenses to him for the first two days. If the contention of the respondents' side now put forth before this Court has got to be accepted, then, there was no reason for allowing the benefits for the first two days namely 21.9.2001 and 22.9.2001. All the above would be clearly indicative of the fact that the respondents come forward with a flimsy defence and in order to defeat the rights of the petitioner, to which he is entitled to as per the circular of the year 1993, which would stand to the benefit of the petitioner. In such circumstances, the order of the first respondent has got to be quashed, and the second respondent has to be directed to make payment of the entire sum as found in the bills and claimed in the writ petition.

14. In the result, this writ petition is allowed, and the order of the first respondent is quashed. A direction is issued to the second respondent in the above lines. No costs.

Index : yes
Internet: yes

To:
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India Ltd.,
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Tolstoy Marg, New Delhi 110 001.
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nsv/